IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

RSA.No. 319 of 2007()

AS.82/2002 of ADDL. DISTRICT COURT, PATHANAMTHITTA
OS.204/1994 of M.C.,PATHANAMTHITTA
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: APPELLANT/APPELLANT/PLAINTIFF

NARAYANAN NAMBOODIRI,
KIZHAKKE ILLATHU, ELANTHOOR, KIZHAKKUM MURI,
ELANTHOOR.

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

RESPONDENTS: DEFENDANTS
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1. KESAVAN NAMBOODIRI, KIZHAKKE ILLATHU,
ELANTHOOR KIZHAKKUM MURI, ELANTHOOR, (DIED).

Addl 2. NIRMALADEVI ANDERJANAM, KIZHAKKE ILLATHU
ELANTHOOR KIZHAKKUM MURI, ELANTHOOR.

3. AYISWARIA DEVI, DO. DO.

4. AJAYA KUMAR, DO. DO.

5. SAVITHRI ANDERJANAM, DO. DO.
(R3 AND R4 (MINOR) REP. BY GUARDIAN 2ND RESPONDENT

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 319 OF 2007

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Dated this the 23rd day of July, 2007

JUDGMENT

Plaintiff in O.S.204/1994 on the file of Munsiff Court, Pathanamthitta is the appellant. Defendants are the respondents. The suit was originally instituted against defendant son. On the death of the defendant, respondents being the widow and children were impleaded as his legal heirs. Appellant instituted the suit contending that defendant has no manner or right over the plaint schedule property and on 22.3.1991 appellant and his wife executed Ext.A1 in favour of the defendant son as they were made to believe that he would look after the affairs of the parents and defendant wanted to avail a loan from the Bank for the purpose of conducting business and representing that the document is being executed as equitable mortgage in respect of the plaint schedule property. Contending that only on 20.2.1994

appellant came to know that Ext.A1 was not a mortgage but a sale deed, suit was instituted for a declaration that it is vitiated by fraud and undue influence and defendant has no manner or right over the same. Respondents in their written statement contended that plaint schedule property was sold by appellant in favour of defendant under Ext.A1 sale deed after receiving consideration and it is an outright sale and it is not vitiated by fraud and appellant is therefore not entitled to the decree sought for.

2. Learned Munsiff on the evidence of Pw1, DW1 and Ext.A1 to A7, B1 to B8 dismissed the suit holding that Ext.A1 sale deed is not vitiated and is valid and binding on the appellant. Appellant challenged the decree and judgment before District Court, Pathanamthitta in A.S.82/2002. Learned District Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the appeal.

3. Learned counsel appearing for appellant was heard.

4. The argument of learned counsel appearing for appellant is that under Ext.A1 sale deed, plaint schedule property was sold only for a total considertion of Rs.20,000/- when Ext.A6 certificate issued by the Tahsildar shows that value of property is more than Rs.1,00,000/- and eventhough Ext.A1 sale deed was executed on 22.3.1991 the fact that ten cents out of the property covered under Ext.A1 was sold under Ext.A3 as early as 18.4.1980 was not mentioned therein and the fact that Ext.A2 mortgage was subsequently executed by the appellant and his wife in favour of Elanthoor Co-operative Bank after execution of Ext.A1 sale deed establish the case of the appellant that he was made to believe that he was executing not a sale deed but a mortgage deed and courts below did not appreciate this evidence and should have found that Ext.A1 was not voluntarily executed and is vitiated by fraud played by the son deceased defendant.

5. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal.

6. True, eventhough 10 cents of the property covered under Ext.A1 was alienated by appellant under Ext.A3, a decade earlier to the date of execution of Ext.A1, that fact was not disclosed in Ext.A1. But that does not mean that Ext.A1 was vitiated by fraud. If the appellant did not mention that the property sold under Ext.A3 was sold earlier and the entire property was sold as if there was no previous alienation, what the assignee under Ext.A1 could claim is only balance extent which was available with the appellant. On that ground it cannot be said that Ext.A1 is vitiated. Similarly when Ext.A1 sale deed was executed by the father in favour of the son, the consideration shown in the document is not very relevant, as consideration always depends on necessity as well as the relationship between the parties. The trial court and first appellate court

elaborately considered all the relevant aspects and evidence and found that Ext.A1 is not vitiated by fraud. That factual finding cannot be interfered by this court in exercise of the powers of this court under section 100 of Code of Civil Procedure. This court cannot reappreciate the evidence and substitute the findings of this court to that of the courts below. It is also admitted case that on the date of execution of Ext.A1 sale deed appellant had sold another 35 cents as per document No.677/1991 and though that sale deed was challenged in O.S.212/1994, as evidenced by Ext.B8 judgment, the said suit was dismissed and it has become final. In the light of the findings of the courts below, no substantial question of law is involved in the appeal. Appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006